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Federal Communications Commission
Office of Secretary

February 24, 1997

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William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20037

Re: CC Docket No. 96-45; Ex Parte

Dear Mr. Caton:

As noted in the Recommended Decision of the Federal-State Joint Board on Universal Service, the phrase "insular areas" is not defined in the Telecommunications Act of 1996 ("1996 Act").¹ Moreover, the Commission has not yet construed the phrase as it appears in the context of Section 254 of the 1996 Act² (although the Commission has listed locations it considers to be insular areas inconsistently in various proceedings in the past). Now, as the Commission considers how it will allocate limited universal service support resources in the instant proceeding, it is important that it adopt a clear and precise definition of the phrase "insular areas."

The Commonwealth of the Northern Mariana Islands ("Commonwealth") proposes that the Commission adopt the following simple and precise definition for the phrase "insular areas": Insular areas are islands that are territories or commonwealths of the United States or are quasi-independent nations that are associated with the United States by compact or other special arrangement.

¹ In re Matter of Federal-State Joint Board on Universal Service, Recommended Decision, CC Dkt. No. 96-45, FCC 96J-3 (Nov. 8, 1996) at para. 7 n.8.

² "Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services[.]" 47 U.S.C. Sec. 254(b)(3).

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This definition conforms to the dictionary definition, which defines "insular" as "of, or having the form of an island[.]"³ The Commission thus must adhere to this commonly-understood meaning of the word since the Supreme Court has held that "if the statutory language is unambiguous, in the absence of 'a clearly expressed legislative intent to the contrary, that language must ordinarily be regarded as conclusive.'"⁴ Thus, in this instance, the term "insular" only applies to an island; it does not apply to rural or isolated areas of the mainland United States.

By including the phrase "territory or commonwealth," the Commonwealth restricts the definition of the phrase to areas that are populated islands and have a local government. The proposed definition excludes islands that are also states, islands that are parts of states and islands with no indigenous population.

In describing its jurisdiction, the Department of the Interior's Office of Insular Affairs ("OIA") consistently uses a list that conforms to the Commonwealth's proposed definition. A current listing of regions that the OIA considers to be insular areas under its jurisdiction reads as follows:

The Department of the Interior has administrative responsibility for coordinating Federal policy in the U.S. insular areas of American Samoa, Guam, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands, as well as in the Trust Territory of the Pacific Islands. The department also has responsibility for oversight of all federal programs and funds in the freely associated states of the Republic of the Marshall Islands and the Federated States of Micronesia.⁵

It should be noted that following Congressional grant of greater autonomy to the people of Puerto Rico in 1950,⁶ the Department of the Interior relinquished its stewardship over federal affairs on that island. Thus, Puerto Rico is no longer listed among the OIA's areas of responsibility. However, as a U.S. possession at some distance from the mainland that is an island and is not a state, Puerto Rico clearly fits both the Commonwealth's proposed definition and the OIA list of "insular areas."

³ Webster's New World Dictionary 731 (2d College Ed. 1982).

⁴ Bob Reves v. Ernst & Young, 570 U.S. 170, 177 (1993), quoting United States v. Turkette, 452 U.S. 576, 580 (1981).

⁵ This is the introductory paragraph to the OIA's internet home page, which is at <http://www.doi.gov/territor.html>.

⁶ See Pub. L. No. 600, 64 Stat. 319 (1950).

Significantly, the Commission has recently identified a listing of insular areas for purposes of the Section 254(g) rate integration requirement in its August 7, 1996, Report and Order. In addition to the areas encompassed by the OIA (plus Puerto Rico), the Commission's list includes Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, the Midway Atoll, Navassa Island, the Palmyra Atoll and Wake Island.⁷ With some exceptions, these areas are not included within the OIA's definition because they are uninhabited. Jurisdiction for the majority of these areas falls to the Department of the Interior's Fish and Wildlife Service or, in the case of areas with strategic importance, directly under the jurisdiction of the U.S. Navy.

The OIA list represents a suitable model for the Commission because the OIA has jurisdiction over federal affairs on inhabited U.S. islands that are territories or commonwealths, with the special exception of Puerto Rico. The OIA list is therefore reliable and authoritative. The list also accords with the commonly understood dictionary definition.

The consistency with which the OIA uses its list is demonstrated by the OIA's own publications as well as in federal legislation that applies to the OIA. For example, the opening paragraph of the current edition of the OIA's A Report on the State of the Islands notes that the

report responds to the Senate Committee on Appropriations' Report 102-122, which requested the Secretary of the Interior to submit annually a report on the state of the United States insular areas. The committee requested that the report include basic economic development information on the U.S. Virgin Islands (U.S. VI), Guam, the Commonwealth of the Northern Mariana Islands (CNMI), American Samoa and the Republic of Palau[.]⁸

The OIA's list matches various provisions of Chapter 48 of the U.S. Code, "Territories and Insular Possessions," such as Section 1469a, "Congressional Declaration of Policy Respecting 'Insular Areas,'" which cites the same areas as cited on the OIA's internet home page, above, as "insular areas."⁹ Section 1492, "Development of Renewable Energy Resources," offers the same list.¹⁰

⁷ In re Implementation of Section 254(g), Report and Order in CC Dkt. No. 96-61, FCC 96-331, para. 55 n.118 (Aug. 7, 1996).

⁸ U.S. Department of the Interior, Office of Insular Affairs, A Report on the State of the Islands 1 (Aug. 1996).

⁹ 48 U.S.C. Sec. 1469a.

¹⁰ 48 U.S.C. Sec. 1492(a)(1) and (3).

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To the extent that the Commission adopts a list of insular areas that is more broad than the list proposed by the Commonwealth and that used by the OIA, it risks opening a Pandora's box. By using a broad and vague standard, the Commission can expect to be inundated with requests from areas throughout the country for designation as "insular areas."

Therefore, the Commonwealth respectfully recommends that the Commission adopt the definition set forth herein to interpret the phrase "insular areas" under Section 254 of the 1996 Act.

Please direct any questions to the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to read 'Thomas K. Crowe', written over the word 'Sincerely,'.

Thomas K. Crowe
David H. Schwartz,
Counsel for the Commonwealth of the
Northern Mariana Islands

cc: All Commissioners
Universal Service Joint Board
Regina Keeney, FCC
Mary Beth Richards, FCC
Robert W. Spangler, FCC
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